

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA, : 05-CR-457(ARR)

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: United States Courthouse
: Brooklyn, New York

GLENN MARCUS,

: February 12, 2007
: 9:30 a.m.

Defendant.

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TRANSCRIPT OF CRIMINAL CAUSE FOR JURY TRIAL
BEFORE THE HONORABLE ALLYNE R. ROSS
UNITED STATES DISTRICT JUDGE, and a Jury.

A P P E A R A N C E S:

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Preliminary Instructions

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1 (Defendant present in open court.)

2 THE COURT: Is everybody ready? Get the jury,
3 please?

4 COURTROOM DEPUTY: All rise. Jury entering.

5 (Jury enters courtroom.)

6 THE COURT: Dennis, would you please swear the jury
7 in.

8 COURTROOM DEPUTY: Please stand and raise your right
9 hand.

10 (Jury panel sworn by the courtroom deputy.)

11 THE JURY: (Collectively) I do.

12 COURTROOM DEPUTY: Please be seated.

13 THE COURT: Ladies and gentlemen of the jury, we're
14 about to begin the trial of this criminal case about which you
15 heard something during the course of jury selection; but,
16 before the trial begins, there are certain things I wish to
17 tell you to help you understand what will be presented and how
18 you should conduct yourselves during the trial.

19 To begin with, you are here to administer justice in
20 this case according to the law and the evidence. You are to
21 perform this task with complete fairness and impartiality and
22 without bias, prejudice or sympathy for or against the
23 Government or the defendant.

24 This case is important to the defendant who is
25 charged with committing certain crimes and who has the

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1 constitutional right to receive a fair trial. The case is
2 also important to the Government since the enforcement of the
3 of criminal laws is important.

4 The case is based on an indictment. During the jury
5 selection, I read the indictment to you. I instructed you at
6 that time and I instruct you again: The indictment is simply
7 the document by which a criminal action is commenced. It is
8 merely an accusation, a charge. It is not evidence of the
9 defendant's guilt.

10 Because the defendant has pleaded not guilty, the
11 Government has the burden of proving each of the essential
12 elements of the crimes charged in the indictment beyond a
13 reasonable doubt.

14 The purpose of the trial is to determine whether the
15 Government meets its burden. The defendant does not have to
16 prove his innocence. On the contrary, the defendant is
17 presumed to be innocent of the accusations contained in the
18 indictment. As you have already heard, the indictment
19 contains three counts:

20 Count One charges the defendant with the offense of
21 sex trafficking by force, fraud or coercion in violation of
22 Title 18 United States Code Sections 1591 and 2.

23 Section 1591 provides in relevant part "...[w]hoever
24 in or affecting interstate or foreign commerce recruits,
25 entices, harbors, transports, provides or obtains by any means

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1 a person or benefits financially or by receiving anything of
2 value by participation in a venture which has engaged in an
3 act described in violation..." of the sentence that I just
4 read to you.

5 "Knowing that force, fraud or coercion will be used
6 to cause the person to engage in a commercial sex act shall be
7 guilty of an offense against the United States."

8 Section 2 makes it a crime to aid and abet others in
9 the commission of the crime defined by Section 1951, that is,
10 to commit sex trafficking by force, fraud or coercion.

11 Count Two charges the defendant with the offense of
12 forced labor in violation of Title 18 of Section 1589.

13 Section 1589: "Whoever knowingly obtains the labor
14 or services of another person by threats of serious harm to or
15 physical restraint against that person or another person or by
16 means of any scheme, plan or pattern intended to cause the
17 person to believe that if the person did not perform such
18 labor or services, that person or another person would suffer
19 serious harm or physical restraint shall be guilty of an
20 offense against the United States."

21 Again, Section 2 makes it a crime to aid and abet
22 others in the commission, here the crime defined in Section
23 1589, that is, to commit forced labor.

24 Count Three charges the defendant with the offense
25 of knowingly transporting obscene material in interstate

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1 commerce in violation of Title 18 United States Code Section
2 1462(a). That section provides in relevant part:
3 "...[w]hoever knowingly uses any interactive computer service
4 for carriage in interstate or foreign commerce any obscene
5 matter shall be guilty of an offense against the United
6 States. "

7 Section 2 makes it a crime to aid and abet others in
8 the commission of the crime defined by Section 1462(a), that
9 is, the transportation of obscene material.

10 The trial will proceed in the following order:

11 First: The parties will have the opportunity to
12 make opening statements. The Government will make such a
13 statement, then the defendant may do so. The defendant is
14 not, however, obliged to make an opening.

15 Indeed, the defendant has no obligation to do
16 anything during the course of this trial. What is said in
17 these opening statements is not evidence, rather, the
18 attorneys will attempt to give you an introduction to, or an
19 overview of, the evidence which they expect will be produced
20 during the course of the trial.

21 After the opening statements, the Government will
22 introduce evidence in support of the charges contained in the
23 indictment. This may be testimony from witnesses, it may be
24 physical items, exhibits which are offered into evidence. If
25 an item is received in evidence, the attorneys may choose to

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1 have you look at it here in court right at the moment at the
2 received.

3 Whether they to this or not, however, if you wish to
4 study any exhibits further, and to the extent that it's
5 practical, I will send any requested exhibits received in
6 evidence into your jury room during your deliberations so that
7 you will have ample opportunity to examine them.

8 You should pay careful attention to the testimony
9 given by any witness. Let me say, however, if in the course
10 of your deliberations, you have a question as to what
11 witnesses, in fact, said on any matter, the court reporter is
12 available to go through his or her notes and read back to you
13 any portions on which you have any question.

14 Second: When the Government has concluded putting
15 in its evidence, the defendant may present evidence but he is
16 not required to do so. The burden is always on the Government
17 to prove every element of an offense charged beyond a
18 reasonable doubt. The law never imposes on the defendant in a
19 criminal case the burden of calling any witnesses or
20 introducing any evidence.

21 Third: If the defendant puts on any evidence, the
22 Government may or may not wish to put further evidence before
23 you to rebut what the defense has set forth.

24 Fourth: Once all the evidence has been presented,
25 each party has the opportunity to present closing arguments or

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1 summations to you. What is said in these arguments is not
2 evidence of the each party is simply presenting to you its
3 view of what the evidence has shown and suggesting to you the
4 inferences or conclusions that you should draw from the
5 evidence.

6 You may find an argument sound and persuasive, you
7 may or you may not. Because the Government has the burden of
8 proof in the case, it has the right to argue first followed by
9 the defendant after which the Government may give a rebuttal
10 summation.

11 Fifth: After you've heard the arguments, I will
12 instruct you on the applicable law. You will then retire to
13 consider your verdict; your verdict must be unanimous.

14 You have a tremendously important task as jurors.
15 It is to determine the facts our constitution gives the
16 defendant the right to have you who are members of the
17 community find those facts. You and not the Court are the
18 sole judges of the facts. I shall try to preside impartially
19 and not to express any opinion concerning the facts. If at
20 any time I should make a comment with respect to the facts,
21 you may disregard it. It is your judgment as to the facts and
22 not mine which controls.

23 As sole judges of the facts, you must determine
24 which of the witnesses you believe, what portion of their
25 testimony you accept, and what weight you attach to it.

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1 In the course of the trial, the attorneys may, from
2 time to time, stand and say that they object to a certain
3 question or certain evidence. They are asking me to make a
4 ruling of law as to the admissibility of that evidence. There
5 are certain rules that apply to the receipt of evidence in
6 trials. If I sustain an objection, it means that I think the
7 law does not permit receipt of the evidence in question. You
8 are to disregard the question asked. You are not to speculate
9 about how it might have been answered. You simply have no
10 evidence before you on that subject. If I sustain an
11 objection after the answer has been given, I will strike the
12 answer, meaning, that you are not to consider it at all in
13 your directions. You are to act as if that answer had never
14 been given.

15 On the other hand, if I overrule an objection, it
16 means that I find no reason in law not to let the evidence
17 come before you. You should not, however, attach any special
18 weight to evidence that comes in over an objection, simply
19 consider it together with all the other evidence in the case.

20 No statement, ruling, remark or comment which I may
21 make during the course of the trial is intended to indicate
22 any opinion as to how you should decide the case or to
23 influence you in any way in your determination of the facts.
24 At times, I may ask questions of witnesses, I do so simply to
25 bring out matters which I think should be brought out and not

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1 in any way to indicate an opinion about the facts or the
2 weight you should give the testimony of the particular
3 witness. You you must not consider neglect that you may have
4 read or heard about the case outside the courtroom whether
5 before or during the trial.

6 Obviously, it includes any publicity about the case
7 whether in the newspapers or the radio; on the television or
8 on the Internet. There may be publicity about the case as the
9 trial goes forward. I'm sure you understand from what I've
10 said during the jury selection that cases are tried in the
11 courtroom under prescribed rules of procedure and not in the
12 press or in the radio or on television. For these reasons,
13 you are instructed not to read, listen to or watch news
14 reports concerning the case.

15 If you should unavoidably see an item, disregard it
16 and put it out of your mind and let me just suggest, again, if
17 you're perusing a paper and see anything that even begins to
18 suggest that it might relate to this case just turn the page,
19 okay, but you really don't want to read or hear or see
20 anything about the case.

21 But, I also want you to let me know by writing me a
22 know note that you have seen something but do not tell the
23 other jurors that you have seen anything or heard anything or
24 even that you have written me a note. This instruction
25 continues throughout the entire trial, whether or not I repeat

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1 it. You must not be influenced by anything you may have seen
2 or heard outside of the courtroom.

3 You are in the best position of anyone to listen to
4 what the witnesses testified to. You will see these witnesses
5 sworn, they will take a solemn oath before you to tell the
6 truth, the whole truth, and nothing but the truth. You will
7 hear them on direct examination and on cross-examination; you
8 will hear every word that is said. The case must be decided
9 by jurors who base their decision solely on the witness's
10 testimony and the other evidence introduced at trial.

11 Finally, if any person be it a reporter, an
12 attorney, a party or anyone else should attempt to communicate
13 with you or talk to you about the case, it is your duty to
14 report that immediately to me in writing and not to discuss
15 with any of your fellow jurors the fact that then approached
16 you or that you wrote me a note.

17 Now, there are several rules which should govern
18 your conduct during any recess or break that we take in the
19 trial.

20 First: After I've continued to indicate, do not
21 discuss the case among yourselves or with anyone else during
22 any recess. Even as among yourselves you see, it is important
23 that each of you keep an open mind reaching your conclusion.
24 Only in your final deliberations, after all the evidence is
25 in, and you've heard the attorneys' summations and my

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1 instructions on the law. Only then will you again to exchange
2 views among yourselves and reach your verdict.

3 Now, the instruction that I have just given to you
4 is counterintuitive, it's contrary to human nature. Serving
5 on a jury is a unique experience, it's an interesting
6 experience; it's an experience that you perhaps have only once
7 or twice in a lifetime and it's something that you would
8 naturally want to share with friend or family as the trial
9 goes along.

10 What's wrong with that is that as you begin
11 discussing the case with others, they want to give you their
12 opinion of what they think about the case even though they
13 haven't been here. Even though they haven't heard any of the
14 evidence and even though they haven't heard the arguments of
15 counsel and my instructions on the law and it fundamentally
16 deprives all the parties of a verdict that's based on a
17 determination of jurors who have heard all of what I've just
18 referred to.

19 So, as difficult as it may be, please do not discuss
20 the case with anyone else, and when I say, "Do not discuss the
21 case," I'm talking about the evidence in the case in
22 particular and any view that you might have about the
23 evidence. Please do not discuss that at all.

24 The same is true with respect to discussing the case
25 among yourselves. That, too, is counterintuitive. After all,

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1 the thing that brings you here together each day is this
2 trial. What's wrong with beginning the discussion of the case
3 before the case is submitted to you is that if you begin
4 talking about the case, even among yourselves, you might begin
5 to come to tentative opinions and conclusions that might close
6 your mind to other evidence or arguments by counsel or to my
7 instructions on the law.

8 Here, again, when I say, "Do not talk about the
9 case," what I'm telling you is a common sense rule. You can
10 talk about what you think about what the lawyers are wearing,
11 innocuous conversation is perfectly all right. When I say,
12 "Do not talk about the case, even among yourselves," I am
13 talking about the evidence that you hear in the courtroom and
14 whether anybody is guilty or not guilty.

15 Also, you should not permit any other person to
16 discuss this case with you or in your presence; and, as I
17 indicated before, if anyone should approach you in an effort
18 to discuss this case with you you should report that fact to
19 me and tell that person that you cannot discuss that case.

20 But, again, you should not discuss with your fellow
21 jurors either that fact or any other fact that you may feel
22 necessary to bring to my attention. The reason is obvious:
23 If something occurs that affects the ability of a juror to
24 continue to serve fairly and impartially and that juror
25 communicates it to fellow jurors, then more of you may be

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1 affected.

2 Third, although it's normal for people to talk to
3 those with whom we're thrown into day-to-day contact, please
4 do not, while you're serving as jurors in this case, have any
5 conversation with the parties, the attorneys or any witnesses
6 in the case whether in the courtroom, in the hallways, in the
7 elevator, outside or anywhere else. By this, I mean not only
8 do not talk about the case, do not talk at all, even to pass
9 the time of day. You see someone seeing a juror in
10 conversation with a party or a lawyer or a witness might think
11 that something improper was being discussed. So, to avoid
12 even the appearance of impropriety, have no conversations.

13 As I indicated, the lawyers, as officers of the
14 Court, are particularly sensitive to this, so I can tell you
15 that if they pass you in the halls without acknowledging your
16 presence they do not mean to be rude.

17 Those of you who have been selected as alternate
18 jurors should listen as carefully and conscientiously as the
19 other jurors. You may very well be called upon, prior to the
20 conclusion of the case, to taking the place of one of the
21 other jurors and then you will have to deliberate and render a
22 verdict. So, please, pay strict attention at all times.

23 With that, by way of introduction, we'll hear from
24 the prosecutor: Ms. Magnelli.

25 MS. MAGNELLI: Her hands, her hands were shackled to

Opening Statement - Ms. Magnelli

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1 the wall, hood over her head, while a man called himself God
2 slept. She was awaiting her punishment. She had refused to
3 bring her younger sister to him to be his sex slave. He had
4 told her to bring her younger sister; to give her roofies, a
5 powerful sedative and muscle relaxant. When she brought her
6 younger sister, he was going to take her sister's clothes off
7 and make her sister his slave. Of all the things that she
8 would do for him this she would not do this. And for her
9 refusal, he would punish her and she knew it and she was
10 terrified and she wanted to leave.

11 She escaped her bindings but by then God was awake
12 and she told him: I want to go; I want out of here; I want to
13 leave. He said: No, you will serve me; and for your
14 disobedience, I will punish you. She got back on the wall,
15 back in the shackles, he took a whiffle ball and he put it in
16 her mouth then he took inch-and-a-half long surgical needles,
17 and one by one he forced them through her top lip and into the
18 ball not once, not twice, but five times until that ball was
19 secured in her mouth.

20 She couldn't speak; her screams were muffled. She
21 could barely breathe, but then, then the punishment began.
22 Then he began to whip her. Then he began to beat her over and
23 over again as she whimpered, as the blood trailed down her
24 body, the tears trailed down her face and he continued to beat
25 her until he finally let her down from the wall. But he

Opening Statement - Ms. Magnelli

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1 wasn't done yet, he took her down from the wall, and he took
2 her into another room and tied her to a wooden board, and with
3 a needle and thread he attempted to sew her vagina closed
4 until the needle broke and that just made him whip her and
5 beat her again and again and again for nearly an hour. This
6 punishment continued until ultimately he took a knife and he
7 put cuts her all over her body, finally carving his initials
8 into the soles of her feet.

9 G.M., Glenn Marcus, the man who called himself God,
10 the defendant. And he took photos, he took lots and lots of
11 photos and those photos he put on the Internet so he could
12 make some money.

13 Now, ladies and gentlemen, over the next few days,
14 you're going to hear about a world you may never have heard
15 about before. You're going to hear words like "bondage,"
16 "domination," "submission," "sadism," "masochism." You are
17 going to hear about this community, BDSM for short. You are
18 going to hear where this is a world where some individuals
19 take sex sexual pleasure in whips and chains, about being
20 bound, and having pain inflicted on them. You are going to
21 learn about this world just like the woman I told you about
22 learned about this world, that woman's name is Jodi.

23 In this world of bondage, domination, and
24 sadomasochism and Jodi learned about, she learned something
25 else. She learned that the defendant hid his abusive nature

1 behind the smokescreen of this BDSM community.

2 Now, let me boil it down for you. This case is
3 going to come down to consent. Were all of Jodi's actions a
4 product of her free will or were some of them a product of
5 violence and fear and threats? You will learn that the
6 defendant, throughout his relationship with Jodi, refused her
7 any time she wanted to leave; he did not accept it when she
8 said no. Over and over again, he refused her the ability to
9 choose. But who is Jodi and how does she get into this? Jodi
10 is someone's daughter; she's someone's sister. She comes from
11 a family of six from the midwest. She loves music and dance
12 gymnastics. She plays the violin and the flute. She went to
13 college for four years in Wisconsin. She had friends, she had
14 boyfriends. She went out; she surfed the Internet.

15 And in 1998, when she was surfing the Internet, she
16 came across a domination submission chatroom, a place online
17 where people get together and chat about their similar
18 interests. Well, this was new, this was different, so she
19 read on. She became curious, she learned things about this
20 world. She learned that this world has guidelines, it has
21 rules. She learned that the very cornerstone of the BDSM
22 community is that all interactions are safe, they're sane, and
23 they're consensual. She learned about masters; she learned
24 about slaves. She learned of dominance and submissives; she
25 became curious. She learned about safe words, essentially

1 just a word or gesture that will immediately stop play in a
2 BDSM scene.

3 She met someone online; she thought she could give
4 BDSM a try. The first person she met online, very brief they
5 only hung out a few times, nothing really happened. She then
6 met someone else. That individual actually gave her a
7 questionnaire to figure out what she did and didn't want to
8 do, and during that relationship, she actually used a safe
9 word when something became too painful or too scary.

10 But then, in late 1998, Jodi met the defendant, she
11 met him online. It was his charisma, his confidence, his
12 sense of humor that attracted her. She responded to jokes;
13 they began to talk online. He invited her into his private
14 chatroom, to talk in his private chatroom, called "Found God"
15 and there they continued to talk.

16 The defendant told Jodi, I'm a master; I don't use
17 safe words. I don't have limits; I'll do whatever I want to
18 any slave I have. Everybody else, they're a sham. Jodi never
19 heard that before, it scared her. But she didn't actually
20 believe that someone really would have no limits, that her
21 ability to say no wouldn't be respected. On top of that, she
22 also spoke to two other slaves that served the defendant.
23 Women named Joanna and Celia and they assured Jodi, no, he's
24 wonderful, he's never actually going to injure you. So, while
25 she was still scared, she was also still curious.

Opening Statement - Ms. Magnelli

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1 So, at the end of 1998, Jodi flew from her home in
2 the midwest to Joanna's apartment in Maryland where she spent
3 the weekend with the defendant and Joanna. She did this twice
4 and she experienced some BDSM activities that were more
5 intense than her first two relationships but she came away
6 deciding I'd like to be with him.

7 So, in January of 1999, she moved into Joanna's
8 apartment, packed her things, left her family, left her
9 friends, and moved into Joanna's apartment and you will hear
10 that for the first few months Jodi was in the BDSM lifestyle
11 and followed the defendant's orders when he wasn't there
12 because he actually lived in New York and not in Maryland.

13 But as time wore on, the defendant's actions became
14 more severe. They became more cruel, more severe in every way
15 within her life. She became depressed about it, only having
16 been with the defendant six months. She started to act out
17 because of her depression. She burned herself with
18 cigarettes. After having done that, she was scared the
19 defendant would simply find the marks on her body so she told
20 him he didn't help her. He didn't get her medical attention,
21 he punished her.

22 One of the ways he punished her was by taking
23 cigarettes and putting them out all over her body. He put
24 them out on her back, on her arms, on her legs, under her
25 arms, inside of her vagina. She was way more depressed, she

1 became more fearful.

2 And then, a few months later, is when the defendant
3 asked Jodi to bring him her younger sister and, again, that
4 she couldn't do, she wouldn't do it, and he punished her for
5 it. He pinned the whiffle ball in her mouth, he carved his
6 initials into the soles of her feet, and that was day, that
7 was the first day when she told him, I don't want to do this
8 anymore and he had refused her. It was that incident, that
9 punishment, that changed her.

10 Now, her fears of what he would do now, her fears
11 overwhelmed her because now she knew the cruelty that he was
12 capable of and before that day, she believed that she could
13 leave. I mean, why not had other women had left him and he'd
14 always said, I don't want a slave that doesn't want to be
15 here. That's what he said but that's not what he did to Jodi.

16 The following month, Joanna, whom Jodi lived with,
17 told the defendant she didn't want to serve him anymore. The
18 defendant, in response, threatened. He threatened to send
19 sexually explicit photos and videos of Joanna to Joanna's
20 elderly father. He threatened to kill Joanna's godson. And
21 Jodi overheard these threats and now her fear increased again
22 because now she knew that if she ever tried to leave him he
23 would do the same to her.

24 After Joanna was out of the picture, the defendant
25 moved Jodi here to New York. He had her move in with a woman

1 named Rona, someone who had served the defendant since they
2 were both teenagers; and while Jodi lived in New York with
3 Rona, the tortures continued, the fear continued, except now
4 the defendant was threatening Jodi in the same way he had
5 threatened Joanna he was now threatening Jodi with exposure to
6 the media, exposure to her family.

7 On top of that, he now forced Jodi to create and run
8 a website. He called it Slavespace.com. He forced her to
9 upload images and diaries from his old website onto his new
10 website. These photographs were of his torture sessions, of
11 his sexual activities. The diaries were stories made to go
12 with the photos, made to make the website more enticing so
13 people would pay so they could see the entire website. He
14 even had her put a photo of her torture session on the front
15 page, on the home page as a teaser, again, to entice people to
16 come in, pay the fee, and get to see the whole gallery of
17 items, thousands of pages.

18 So now, not only was the defendant making Jodi
19 perform the sexual acts in the photographs, he was also making
20 her market them. He was making her market photos of her being
21 tortured. He was making her market sexually explicit photos
22 of his other slaves. How do he do that? He threatened her.
23 And if she didn't work hard enough for to his satisfaction, he
24 would beat her. He forced her to work 8-to-10-hour days
25 uploading images, writing diaries, collecting from members,

1 clicking on ads all to turn him a profit. He didn't need a
2 job, he didn't have one, he made Jodi work.

3 So why didn't she leave? Fear, isolation. She was
4 scared of what he was capable of. She was scared that he
5 would, in fact, send photos of her to her family, to the
6 media. She was scared that he would go after her and she had
7 seen what he could do and she was isolated. She was isolated
8 because, at the defendant's insistence, she had given up all
9 her friends.

10 At the defendant's insistence, she had minimal
11 contact with her family. This fear that was building in Jodi
12 became so strong it overcame her and she stayed. And over
13 time, the defendant continued to do things to her that she
14 didn't want. He continued to do things to force her to work
15 on his website.

16 One time, he got so angry that she wasn't working on
17 the website hard enough that he tied her down to the bed face
18 down until she threw up. Another time he got so angry he
19 zipped her into a clear garment bag and choked her until she
20 passed out; and yet, another time he took those surgical
21 needles, those inch-and-a-half-long surgical needles. He took
22 a dozen of them and put them into her breasts and all along
23 taking pictures, lots and lots of pictures, and forcing her to
24 write stories to go with those pictures, all to go on to the
25 Internet, all so people would be enticed to go into the

1 website, pay the money, see the full gallery, all for his
2 profit.

3 When it came to money for the defendant, he would
4 also force Jodi to go out and get jobs. She would have
5 babysitting jurors and eventually she got a job at a corporate
6 office and there were other people there. Now she had
7 co-workers; she made some friends. She started to think about
8 her life; she started to think that she wanted a different
9 life. So, she called the defendant in spring of 2001 and she
10 said, I want out; I don't want to be with you anymore. He
11 said okay, but only if you go through one more punishment.
12 And Jodi was terrified, she was terrified of what he would do
13 to her, but she was more terrified of what he would do if she
14 didn't submit and she thought it would be one more time. She
15 wanted out and she believed this was her only way out.

16 It was a Saturday. The defendant called: Meet me
17 downstairs. She got into his car; he didn't let her speak.
18 Fear set in; she shook with it. He drove her to a house in
19 Long Island. She got out the car; she started to weep. She
20 begged him to let her go. He took her inside the house; he
21 forced her to take her clothes off. He forced her down the
22 stairs into the basement; Jodi began to scream. She became
23 frantic; she didn't want to be there. She turned around; she
24 went up the stairs. He blocked her; he pushed her down back
25 down the stairs. She pleaded to be let go; she started

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1 screaming. She screamed for her daddy. She screamed
2 incoherently and he just got angry and he said shut up, the
3 neighbors will hear.

4 She couldn't stop screaming; she was hysterical. He
5 shoved a Valium down her throat but she kept screaming. He
6 took a cord and he tied it around her tongue and then he took
7 one of inch-and-a-half long needles and put it through her
8 tongue and now she couldn't speak anymore; she could still
9 feel the pain. He blindfolded her, took her hands and tied
10 them together with rope. Took her ankles and tied them
11 together with rope and tied them both to the ceiling. He had
12 her stand on a chair and then he would beat her, he would cane
13 her, he would whip her all over her body. Then, he would take
14 the chair out and let her hang out and continue to whip her.
15 He put the chair back and let her stand and continued to whip
16 her for 60 minutes.

17 Ultimately, he took the chair out altogether and
18 left, leaving her hanging there. She hung there for nearly
19 another 60 minutes, bleeding, drugged, bruised, helpless, she
20 couldn't feel her hands, she couldn't feel her feet, and when
21 he finally came back and started to let her down, he stopped.
22 He stopped and he made her smile and pose for the camera
23 because he wanted to taking a picture.

24 When he finally let her all the way down she
25 couldn't walk. So, if she wanted out of that basement she was

1 going to have to crawl and she did. She crawled up those
2 stairs but Saturday wasn't over yet. He made her go to an
3 upstairs bedroom and there he has sex with her and Jodi will
4 tell you at that point while her body felt broken, her will to
5 resist certainly was. He then forced her to look at the
6 injuries on her body taking pictures of her while she looked.
7 He then forced her to write a diary about so he could post it
8 on the Internet. A diary thanking him for that, thanking him
9 for the punishment.

10 And he didn't let her go. In fact, as he was
11 beating her in the basement, he told her I will show you that
12 you are going to serve me. He didn't let her go. And after
13 that day, Jodi felt defeated; she felt broken; she felt
14 depressed.

15 Over the next couple of months, she contemplated
16 suicide constantly until the strangest little thing happened.
17 She had been living with Rona who, again, had been serving the
18 defendant since they were teenagers. Rona was sick of having
19 Jodi around, so the defendant ordered Jodi to go house sit and
20 she did. And this little bit of time, that little bit of
21 space, where she had minimal contact with the defendant gave
22 her just enough hope where she started to separate herself
23 from the defendant slowly.

24 She got her own apartment in September of 2001. Now
25 she kept in touch with the defendant because he still

1 threatened to expose her; he still had her photos. And, in
2 fact, over the time he tried to get her back. Slowly, but
3 surely, Jodi continued to separate herself until she became
4 Jodi again. She was no longer "slave" or "it" or "hooch" as
5 he called her.

6 She wanted the threat of the defendant gone and it
7 wasn't yet. She wanted the photos down from the website. She
8 wanted to be rid of that part of her life. She wanted it
9 down. She asked him repeatedly to take down the photos, he
10 said no. He repeatedly said no. She didn't know what to do;
11 she went to an attorney. The attorney said, go to the FBI;
12 and it was the FBI that took down Slavespace.com.

13 So what the evidence are you going to hear in this
14 case? Most importantly you're going to hear from Jodi. Jodi
15 will tell you all about the torture sessions. She will tell
16 you that the defendant threatened her, beat her, and enslaved
17 her. She will also tell you that before she ever met the
18 defendant in person he knew a few things about her. She had
19 told him while they were talking on the phone that her mother
20 had been cruel and unpredictable. She would tell him that her
21 mother, when she was growing up, used to make her stand naked
22 in the middle of the house while her mother beat her. She
23 told the defendant that her mother would force her to take a
24 shower with her and then her mother would criticize her body.

25 The defendant knew all of these things and in

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1 response to her on the phone he told her, "It's your purpose
2 in life to serve me. That's your purpose, I am your God."

3 You're going to see the contents of the website.
4 You're going to see the photos, you're going to see the
5 diaries. Some of these photos will show Jodi smiling and she
6 will tell you that if she didn't smile for the camera, the
7 defendant would beat her. She will tell that you the
8 defendant demanded that she serve him with happiness,
9 gratitude; that she serve him thankfully, and that she would
10 be severely punished if she didn't.

11 You will also see the photos of Jodi where she's not
12 smiling. You will see the whiffle ball pinned into her mouth.
13 You will see his initials carved into the soles of her feet.
14 The needles in her breast; her in a garment bag. You will see
15 her hanging from the ceiling with blood dripping down her body
16 and these photos aren't fake. You will see the Polaroids that
17 were found in the defendant's room. You will see the sex toys
18 and the items he forced his slaves to use. You'll even
19 receive the billing records to show the defendant made money
20 off of this website, Slavespace.com.

21 And you'll hear from the defendant in phone
22 conversations from 2005, phone conversations that he had with
23 Jodi where he justifies what he did to her. He says he had
24 the right to do those things to her and that, technically, he
25 still has the right to do whatever he wants to her. He talks

1 about an agreement they had where she gives up all ability to
2 say no. An agreement that stripped her of her free will, her
3 basic human right to choose. That's what he'll say in
4 justification.

5 Now, let me tell you about what you're not going to
6 hear in this case. You're not going to hear that consenting
7 adults shouldn't engage in certain activity. We're not going
8 to ask you to decide whether or not consenting adults can
9 engage in certain sexual activities within the privacy of
10 their own home. You're not going to be asked whether or not
11 you free with certain lifestyles. You're certainly not going
12 to be asked to judge Playboy or every image that we have in
13 society today.

14 You will be asked to consider three charges.

15 Count One: Sex trafficking. The evidence will show
16 that the defendant forced Jodi to perform sexual acts which he
17 then took photos of and posted on the Internet and earned a
18 profit from.

19 Count Two: Forced labor. The evidence will show
20 that the defendant forced Jodi to work on his website and he
21 forced her to commit the sexual acts, both of which earned him
22 a buck.

23 And how did he do this? How did he get her to do
24 these things? He got her to do them with fear and violence
25 and threats. He threatened to expose her to his family he

1 threatened to expose her to the media. She overheard the
2 threats to Joanna's godson, he threatened to kill Joanna's
3 godson. She was petrified of what he could do, of his
4 cruelty, and his threats were constantly reinforced,
5 constantly, by repeated and random acts of violence.

6 As you listen to the evidence, ask yourselves, why
7 would he threaten someone who is consenting to what you're
8 doing? He didn't threaten to take away the car, he threatened
9 to expose her to her family.

10 And. Finally, Count Three: The obscenity charge.
11 The Government will show that Slavespace.com portrayed sex in
12 an offensive and degrading manner and that some people are
13 sexually aroused by it -- like people who paid to see the full
14 website.

15 Again, let me point out that this case boils down to
16 consent. You may hear evidence that other women served the
17 defendant willingly, but it's Jodi's consent that matters.
18 It's about what the defendant did to her.

19 You'll also hear some other important thing. You'll
20 hear that Jodi never lived with the defendant. You'll hear
21 that she have had jobs that would take her out of the house.
22 You'll hear that for a little while she had a car can. You'll
23 hear that she had some pocket money here and there. But Jodi
24 will tell you that despite her physical freedom, the
25 defendant's threats, backed by his violence, scared her; it

1 created an atmosphere of fear.

2 By the end of this case, there are certain things
3 that you will know. You will know that the defendant's
4 actions went beyond a BDSM relationship. Threats to expose
5 her to her family, threats to expose to the media, forcing her
6 to take the drug. Threatening to beat her if she didn't work
7 on the website. Threatening to enslave her sister. None of
8 those things have to do with a BDSM relationship.

9 You will also know that the defendant because he
10 knew about Jodi's background, he preyed on her weakness. You
11 will know that he preyed on Jodi's vulnerabilities, enticing
12 her to get into a relationship of perpetual violence and fear.
13 And, you will know that the defendant attempted to strip Jodi
14 of her basic human right to choose, to free will. He ignored
15 her when she said no.

16 Guilty, ladies and gentlemen, that's what the
17 Government will stand before you at the end of this trial and
18 ask you to find. Guilty of all three charges for the man who
19 called himself God.

20 THE COURT: Mr. Sercarz.

21 MR. SERCARZ: Your Honor, Ms. Magnelli, Ms. Chen and
22 Whiteman, Mr. Marcus.

23 Ladies and gentlemen of the jury, Glenn Marcus is
24 not guilty. Glenn Marcus is not guilty because he did not
25 trick or entice; that's the word she used, remember that.

1 Enticed. He did not trick or entice the complainant to join
2 any relationship. He did not force her to stay in the
3 relationship after she made it clear that she desired to leave
4 it and he did not compel her to provide labor and services
5 against her will, nor did he compel her to engage into
6 commercial sex act.

7 And with regard to that website, and you're going to
8 see it, you're going to have the opportunity to review it, and
9 you're going to be asked to consider it taken as a whole,
10 according to the contemporary community standards of our
11 community here in the Eastern District of New York, and when
12 you do, you're going to find that this website is by terms
13 graphic, explicit, ironic, funny, disgusting, and provocative.

14 In fact, most all of it was provocative, but that it
15 is not obscene. And that's why in May of 2005, when agents
16 broke down the door, when they entered the apartment, that he
17 shared with the woman that you will learn is named Rona, when
18 they took him in handcuffs and brought him before a federal
19 magistrate he said in effect I have two words for these
20 charges, two words. Not guilty. The same two words that he
21 has uttered ever since that day, ever since May of 2005,
22 unalteringly, unhesitatingly, unwaveringly, unequivocally, two
23 words: Not guilty. And he stands before you today and he is
24 not guilty of the charges that they have brought against him.

25 I'm going to talk to you a little bit about the

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1 evidence on my opening statement but I have to begin by saying
2 that in a case like this, talking about the evidence is the
3 easy part. I'm very bad at ignoring stuff that's hanging out
4 there in the ozone and treating it like it doesn't exist.

5 So, let's deal with the three questions that you
6 have in your mind right now after listening to an opening
7 statement such as this and listening to what you heard during
8 the jury selection about this lifestyle, this BDSM lifestyle,
9 and about the contents that are on the website and that indeed
10 took place during this relationship when Mr. Marcus and this
11 young lady by the name of Jodi.

12 First of all, question No. 1, would any of their
13 free will consent to any of this treatment? Well, the answer,
14 ladies and gentlemen of the jury is as you will learn from
15 listening to the evidence yes, yes, she did. And if you were
16 listening, if you parse what you were told here, even the
17 Government concedes that when she came into the relationship
18 she came in consensually; she came in knowingly. They already
19 told you that she had read about BDSM before. They already
20 told you that she had been in prior relationships before.
21 They already told you that she had been on the chatrooms
22 before and had learned what this is about.

23 Second question, and I'm going to spend the rest of
24 this case dealing with all three of them, because they're
25 there and it doesn't make sense to ignore it ladies and

1 gentlemen.

2 Question No. 2: Why shouldn't we convict him even
3 if she did consent because these charges are so horrendous,
4 this behavior sounds so egregious to us, and I'm going to tell
5 you why.

6 I'm going to tell you up front and then I'm going to
7 make you believe it by the time this case is over and you've
8 heard all of the evidence. You shouldn't convict him because
9 they've charged him with crimes that he did not commit.

10 I'll remind you, ladies and gentlemen, and I'm going
11 to remind up before you heard hear the court instructs you on
12 the elements of these charges.

13 This is not an assault case, ladies and gentlemen of
14 the jury, this is not a case in which the defendant is charged
15 with rape. He is charged with the more complex federal crimes
16 of sex trafficking and forced labor and the obscenity count
17 that I'm going to get to.

18 When you learn about this lifestyle called BDSM and
19 you're not going to learn about it because the defendant
20 says -- it's in the literature, and you're going to learn it
21 from the people that know about it, and people that
22 participated in it.

23 You're going to learn that there are rituals of
24 bondage and torture that is as horrendous as they sound to us
25 and are part and parcel of this lifestyle. You're going to

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1 I learn that these acts that we would view as torture are
2 engaged in because they are arousing to the participants and
3 not just the participant who implements the "punishment," but
4 the person who receives the punishment as hard as that's going
5 to be to understand.

6 As hard as it's going to be to digest, it happens to
7 be the truth when you evaluate this in context and so you're
8 going to find at the end of this case that when the Government
9 has done here is to take what is clearly a form of erotic
10 play, admittedly in extreme form, and argue that this was
11 punishment for the failure to perform labor and services. But
12 once you understand this lifestyle you can critically evaluate
13 the complainant's testimony you will know that this notion is
14 false.

15 Pins, you're going to hear about it in the context
16 of BDSM. Ropes you're going to hear about it in the context
17 of BDSM. Suspension, you're going to hear about it in the
18 context of BDSM. Defecation, urination, being caged, being
19 blindfolded you're going to hear about it in the context of
20 BDSM as horrible as it is for us to consider. And that
21 revulsion that you are feeling, that you are feeling when
22 Ms. Magnelli gave that dramatic opening statement, I want to
23 you hold on to that revulsion just for a minute longer and now
24 maybe you'll understand how Agent Austin Berglass, that FBI
25 agent, felt when he was first on the receiving end of this

1 story.

2 When Jodi and her lawyer came into the office and
3 recited this litany of horrors, and if you think about it, and
4 you hold on to it, and you feel that maybe they will you'll
5 understand why he wasn't trolling through the United States
6 Code and looking for charges, charges that he could bring,
7 charges to punish this conduct, charges that ended up being
8 the charges of sex trafficking and forced labor, charges that
9 you're going to find upon a neutral review evident evidence,
10 charges that simply don't fit.

11 Charges that simply don't apply because of the
12 failure to truly investigate whether or not this young lady,
13 however damaged she may be by what has happened to her in her
14 life dating back to childhood, is a credible, reliable
15 witness. Charges that when you come to when there is no
16 effort to corroborate.

17 Question No. 3: Why should we work so hard for this
18 defendant? Why should we take the trouble to listen carefully
19 every day when we come to court to apply the rules of evidence
20 to give him the full measure the presumption of innocence even
21 though we're required by law to do so and then to deliberate
22 fully and fairly before rendering a verdict. Why should we
23 work so hard? Coming in as we do at the end of this horrible,
24 foul mess that has been dumped into our laps.

25 By the end of this case, to answer that question, I

1 hope to persuade you that you are not just doing it for him,
2 you are doing it for all of us and, I don't hesitate to say
3 that. This is a very important case, ladies and gentlemen,
4 cases like these tests the limits of our judicial system and
5 its capacity for fairness and beyond that cases like this are
6 a test for our society of its very capacity for tolerance.
7 And speaking for me, I'm very proud to represent Glenn Marcus
8 who stands before you even in the face of charges and
9 accusations such as these.

10 Now, with regard to that evidence, would anybody
11 willingly consent, ladies and gentlemen of the jury, the
12 evidence will show that BDSM is not a pretext for assaultive
13 conduct. It's a fancy term for some lifestyle that is
14 degrading to women but it is defined and S&M. As a term for
15 giving or receiving intense stimulation, bondage or the
16 purposeful enacting of dominant and semi--ive roles usually
17 already sexual gratification. For sexual gratification.

18 It's a lifestyle with its own vocabulary, with
19 participants both male and female. Indeed, you're going to
20 make the acquaintance in this case of a woman named P.W. or
21 Pee Wee. She is a dominatrix, so it works both ways in BDSM.
22 It's a lifestyle with its own rules and expectations.

23 You're going to look that the type of BDSM practices
24 by Mr. Marcus and the complainant are not unique to them. It
25 wasn't simply a series of scenes, a type of foreplay with

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1 limited activity but it was an effort to take the principles
2 of dominance and submission and to make for them a lifestyle,
3 a relationship based upon those principles.

4 In other words, the players applied the rules of
5 this erotic power play to other aspects of fair lives. It
6 wasn't unique to them, indeed, you heard Ms. Magnelli tell you
7 on her opening statement other women were involved with Mr.
8 Marcus at the same time, at the very same time that Jodi was
9 having her encounter with this defendant, and you will find
10 that the behavior in her recitation that most offended you
11 that ritualistic behavior that is common across the spectrum
12 of BDSM.

13 The evidence will show that Jodi knew what the rules
14 and expectations were; that she had participated in these
15 relationships before she ever met the defendant. That she
16 entered the relationship knowingly intelligently, voluntarily,
17 and willingly.

18 The evidence will show that for his part, Mr. Marcus
19 took steps to ensure that his partners were willing and
20 consensual participants and this was not about a casual
21 encounter where there is a misunderstanding followed by a
22 one-night stand.

23 No one will suggest in this courtroom that the
24 defendant was less than up front or that he should have coded
25 what he had in mind in the chatroom.

1 There is no bait and switch here, ladies and
2 gentlemen, and before coming to the defendant she pursued him
3 in the chatroom, talked to him about the relationship. She
4 revealed her fantasies about what she was looking for in the
5 relationship and she sent him a formal petition seeking to be
6 in submission to him.

7 You know, the prosecution made reference to the use
8 of the safe word in BDSM. For 30 seconds, I want you to
9 consider the concept of a safe word. Why is it, ladies and
10 gentlemen, that you need a safe word? Why isn't it enough
11 just to say stop you're hurting me, I don't want to do this
12 anymore? Answer: Because there is a recognition in BDSM that
13 the feelings may be so intense that people may cry out may say
14 stop but that that is not enough to end the scene.

15 That's why you need of a safe word and you will
16 learn, ladies and gentlemen of the jury, that even Mr. Marcus,
17 even in this full-on relationship style of BDSM. Even he had
18 what was in effect a safe word. What he needed to hear from
19 the woman in submission to him is, "I do not wish to serve you
20 any more."

21 The Government acknowledges the behavior began as a
22 consensual one and it crossed the line into nonconsent and
23 that somehow her will was gone and that he created an aura or
24 a climate of fear. Ladies and gentlemen of the jury, the
25 evidence is going to put the lie to this quickly and

1 unequivalently.

2 In October of 1998, the very first time that Jodi
3 encountered the defendant when she flew across the country to
4 engage in her first meeting with him, funny this wasn't told
5 to you, the meeting lasted for four days. She was put in the
6 cage and blindfolded throughout that period of time. She was
7 degraded throughout that period of time. She was assaulted
8 during that period of time.

9 She was made to understand exactly what lay in for
10 her because she was made to feel fear, isolation, and
11 restraint and then she was sent back home to think about it
12 and to make her up mind whether this was really for her and
13 one month later she came back, in November of 1998, she
14 experienced similar behavior in the presence of others, again,
15 restrained, and again, made to feel in fear again subjected to
16 physical pain.

17 Again, she was sent back home to think about whether
18 or not this was really for her. And before she have decided
19 to move across the country and live in Maryland and become
20 part of what you will learn was a communal group participating
21 in BDSM, depending on her memory either two or three occasions
22 when she was subjected to this type of behavior and then
23 certainty home back to her family, back to her support group,
24 back to her life to consider whether this was really for her.

25 And, with all of that, this woman that she hear now

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1 had a college education, a knowledge of music, the capability
2 and functioning in life, chose, ladies and gentlemen of the
3 jury, chose to participate in this lifestyle.

4 The Government suggests there was this aura of fear.
5 There was no sudden traumatic event. The events of October of
6 1999 which were described to you at the beginning of this
7 opening and you'll hear about it in some detail did not come
8 out of the blue. They did not come as a shock. They did not
9 create a trauma. This isn't like the stuff of today's
10 newspapers, ladies and gentlemen of the jury, please don't let
11 pop psychology influence your deliberation here. There was no
12 kidnapped child, suddenly taken away from the parents with
13 which that child grew up. This is not like spousal abuse with
14 its cycle of sudden violence followed by apologies, and
15 "please come back to me." No constant attempt was made at
16 reason forcing control.

17 The defendant saw this complaining witness
18 sporadically a few days a month over a period of more than a
19 year during that period she obtained meaningful employment.
20 She obtained access to her own money. She was allowed to go
21 home to her family. And perhaps most important of all you
22 will meet witnesses who encountered the complainant during
23 this period and not a single person is going to come into this
24 courtroom and tell you that they observed this complainant
25 engaging in behavior with Glenn Marcus that was against her

1 will. Not one.

2 When the complainant succeeded in extricating
3 herself from this relationship, it didn't happen by force she
4 didn't break her chance and run away. It happened when she
5 convinced Mr. Marcus that she no longer wished to be in the
6 relationship with him anymore. It didn't happen at once it
7 didn't happen overnight it happened the way, and forgive me
8 for the analogy, but it's the best one to use, it happened the
9 way that it's happened for every one of us at the end of any
10 meaningful relationship, it happened in fits and starts. It
11 happened with ambivalence, it happened with hesitation.

12 The Government describes the final occasion of
13 torture as in or about the spring of 2001 if I heard correctly
14 on the Government's opening. Well, that's about three years
15 after her initial encounter with Mr. Marcus. That's almost
16 two years after she first claimed, according to what we heard
17 on the opening statement that she communicated her desire to
18 leave. Now Ms. Magnelli mentions that there comes a time when
19 she goes with her lawyer and goes to the FBI.

20 But what was conspicuously absent from that opening
21 statement was the date and I think it's of some significance,
22 ladies and gentlemen of the jury. She went to law enforcement
23 in April of 2004, two and a half years after she claims she
24 succeeded in extricating herself from the relationship and we
25 respectfully submit that we will show she went because she

1 wanted to become a teacher again.

2 This is going to warn warm the cockles of your
3 heart. She wanted to teach young children in the New York
4 public school system and she didn't want her pictures up on
5 the Internet. That's why she went, and like an idiot, like an
6 idiot, my client refused to take her pictures down from the
7 website. But for that perhaps we wouldn't even be here today.
8 With regard to the second question why shouldn't we convicted
9 him even if she did consent?

10 Well, when you've heard all the evidence you're
11 going to recall realize the dangerous of the defendant's
12 people how unstable people who decides after the fact that
13 this relationship was degrading to her and that conclusion
14 must have occurred to her at some point. To take these
15 rituals of bondage and torture that are a staple of these
16 relationships after the fact when you thought better of it
17 when you want to be able to change your life.

18 When you want those pictures to come down and to
19 contrive an allegation such as this. To turn I was
20 voluntarily in submission to him and he broke my will. To
21 take the core erotics of their encounters and claim this is
22 what he did to me if I didn't importantly the labor and
23 services.

24 Ladies and gentlemen of the jury, at the end of this
25 case one thing is going to become abundantly clear this

1 so-called labor and services this as incidental part of the
2 communal part of the relationship. This didn't did not seek
3 to obtain labor and services through this form of conduct.
4 This defendant did not use torture in order to obtain a
5 commercial sex act which is what we're here to decide when we
6 war here to consider Counts One and Two of the indictment.
7 When you realize all of this, ladies and gentlemen, you're
8 going to realize what a hard job await you in this case.

9 You're going to have to judge the credibility of
10 this complainant when she comes to testify and in that regard
11 I have one more introductory thought.

12 She's been in this lifestyle for a long time and all
13 the while wanted to maintain ties in the workforce and in what
14 people in the BDSM lifestyle call the vanilla community. And
15 people who live in that world and want to work and function in
16 our world have to become masters of deception and concealment.

17 If you don't understand what I'm talking about just
18 considerate answers to three simple questions. Do you have a
19 boyfriend? What are your plans fort weekend? What did you do
20 last weekend? What has she been saying all these years? What
21 has she been doing to hide the abuse by her mother and to hide
22 the relationship she's been in.

23 Ladies and gentlemen of the jury, this is a very
24 dangerous witness and I'm going to ask you to subject her to
25 great scrutiny when listening to her testimony: Consider her

1 motives; consider her capacity to fabricate and to shift the
2 blame and to lie.

3 Now, with regard to the obscenity count you're going
4 to be asked to render a verdict on the issue of whether the
5 website is obscene.

6 The court, at the end of this case, will instruct
7 you on the definition of obscenity and it's not for me to
8 offer that kind of instruction but for the sake of focusing
9 you on what you need to consider when the evidence of the
10 website comes in I'm going to suggest to you subject to what
11 the Court will say that there's a three-prong test to
12 determine obscenity and I'm going to ask you to where whether
13 taken as a whole, the average person applying contemporary
14 community standards will find that the dominant appeal to the
15 prurient interest, the shameful interest, in sex in this case
16 to those within the BDSM community.

17 Second, again, from the perspective of the average
18 person applying contemporary community standards, the website
19 depicts or describes sexual conduct in a way that is patently
20 offensive.

21 And third, whether a reasonable person who finds
22 that the material taken as a whole lacks serious literary
23 artistic, political or scientific value. And when you weigh
24 it I'm going to ask you to a decision in your mind about two
25 principles in the explicit sexual and not all pornographic

1 material is obscene according to law; and second, it's not
2 your role to judge the work by your own personal standards.
3 It is to be judged by the outside of the average person
4 applying contemporary commune standards.

5 At the end of this case, I will argue you that this
6 material falls well within community standards for websites
7 that are I am willing to adults by credit card use and that
8 websites that advise those who enter of the graphic content
9 contained therein.

10 And I'm also going to argue that the material has
11 the requisite serious appeal, the scientific, cultural
12 exploration of the BDSM lifestyle. You're going to find that
13 the overarching theme of this website is BDSM, what it's
14 about, where it came from, how women that are in submission to
15 Glenn Marcus feel about participating. And that in that
16 context, the explicit sexual content of both the text and the
17 photos is that a useful purpose because it makes it clear how
18 far submissives are willing to go and what it is that may be
19 demanded.

20 I'm not going to suggest that every single graphic
21 photograph is necessary to make that point, but I don't think
22 that any publication can survive that scrutiny, any moving
23 picture if you were asked whether every nude scene or every
24 sex scene was absolutely necessary in order to make the point
25 and I submit to you that that's not what was required.

1 After you heard all about it and after you viewed it
2 all in context you will know the text, the sound is not just
3 there as a pretext to try to get around the obscenity laws.
4 If anything, the sex, the graphic sex is there to prompt
5 people to read the diaries, explore the text and understand,
6 for better or worse, like it or not revolted by it or not,
7 this BDSM lifestyle.

8 I will never suggest to you that this is an
9 appropriate lifestyle, but I will argue that the obscenity
10 laws are not a device to censor or eliminate any meaningful
11 reference to a lifestyle we don't approve of even one that's
12 revolting to us.

13 Now, finally, in regard to that third question. If
14 we agree to do the hard work. If you work with me in going
15 through this evidence, come to court prepared to deal with the
16 revolting context in which it appears, how can we begin to
17 evaluate the evidence in this case?

18 Ladies and gentlemen, everything I've said has been
19 said in the service of one goal, to get you to keep an open
20 mind. At the end of this case, the Court is going to define
21 four all of the applicable legal principles including the
22 presumption of innocence.

23 The fact that the defendant is presumed innocent,
24 that that presumption remains with him throughout the trial
25 unless and until he has been proven guilty beyond a reasonable

1 doubt.

2 As to each and every element of the crimes charged;
3 that this relationship crossed the line and became
4 nonconsensual and remaining requirements of the statutes are
5 met.

6 Ladies and gentlemen of the jury, if the presumption
7 of innocence has any meaning, it means you got to put aside
8 for the moment your personal views about this lifestyle focus
9 on the evidence, be prepared every day to listen. Be prepared
10 to doubt. The Government has told you before they present a
11 single witness or a word of evidence that the defendant is
12 guilty.

13 All I ask for now is that you focus on the evidence
14 when you come in here tomorrow morning that you view it with
15 an open mind, that you view it with a critical eye, that you
16 wade through this horrible context in order to do the hard
17 work that await you and then you will be on the path to the
18 truth in this case.

19 Thank you very much.

20 THE COURT: Ladies and gentlemen, it's been a long
21 day, we're going to let you go for the evening. We hope you
22 have a lovely evening. Just remember don't talk about the
23 case, you know, make sure that you don't let yourself get
24 exposed to any media coverage if there is any of the case.

25 Be back in the jury room at 9:30 tomorrow morning

1 and we'll continue then.

2 Have a nice evening.

3 (Jury exits courtroom.)

4 MS. CHEN: Your Honor, there's an issue I have to
5 raise in light of Mr. Sercarz's opening. He made reference to
6 Jodi's career and I was going to ask you that before putting
7 her on tomorrow that that was one of the issues that we wanted
8 to address that was in the protective order. We originally
9 ask for different remedies: Not using her full name, not
10 talking about what kind of employment she's involved in now,
11 and not revealing her current location.

12 Now, I realize Mr. Sercarz said she wanted to pursue
13 a teaching career in New York but I guess I wanted to get some
14 clarification but I at least have an unresolved question about
15 whether or not the defense would be allowed to cross-examine
16 her about what her career is i.e. that she's a teacher
17 currently.

18 THE COURT: My recollection, honestly, is that to
19 some extent but going into any detail I thought that that was
20 appropriate. I don't think the opening was inappropriate. I
21 guess I assumed.

22 MS. CHEN: I'm not suggesting that, Your Honor.

23 THE COURT: I assumed that it would come out that
24 that either was her career or at that time was something that
25 she wanted to do. But, the level of detail will require you

1 to be very careful .

2 I mean, I think you've probably almost made the
3 argument already and that's all that needs to be elicited for
4 your purposes.

5 MR. SERCARZ: Yes.

6 MS. CHEN: There is one other issue. Mr. Sercarz
7 also referenced the psychological syndromes. I think he, in
8 fact, and I may be wrong but I think he referenced battered
9 wife.

10 THE COURT: I think so?

11 MS. CHEN: Also, the child kidnapping case which was
12 in the media loathe to mention that but I feel like we've
13 been, pardon my expression, handcuffed in a way in terms of
14 not being able to talk about it because we are not allowed to
15 put on our expert and we felt that the gauntlet was thrown
16 down. We should be able to argue, if not based on expert
17 testimony, that the concept of battered women, but I think,
18 unfortunately, the Court had previously ruled we couldn't
19 because we couldn't make the analogy or we could show there
20 was data sufficient to an apologize a battered wife syndrome
21 to our victim's situation.

22 THE COURT: I don't think you can. I think you can
23 still make the common sense argument that you want to make and
24 the argument that relates to the direct testimony of the
25 witness.

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1 MS. CHEN: But I feel like the defendant has already
2 introduced the consent of battered spouse if we can't address
3 it I handicap I have think he did raise that issue and I'd
4 have to go back and look at the record he did toe mess
5 particular --

6 THE COURT: He said this is not about kidnapped
7 children, this is not about battered women he did say that.

8 MS. CHEN: But that's unfair, Your Honor, we would
9 like to argue that it is akin to, not that she isn't a
10 battered spouse, he is saying there is no connection at all if
11 you know what I mean I think there is some inference that you
12 shouldn't in any way like I think that's a little unfair
13 arguing it but seems to me to say affirmatively you shouldn't
14 think of this along these terms because I think common sense,
15 wise people think of that fairly differently. You should not
16 consider that at all or this is completely different. It
17 creates an issue for us since we cannot respond to that.

18 THE COURT: I understand that. I mean, I don't know
19 what relief you're asking other than you really don't want to
20 hear any more testimony about it but if you hear any more
21 words about it you want to call the witness.

22 MS. CHEN: Or some latitude to counter that in
23 closing perhaps common sense will tell you about situations in
24 your own lives or in the lives of people you know that are
25 comparable in some ways. I mean, I'm not necessarily going to

1 say exactly battered spouse.

2 THE COURT: I don't know that we need to use the
3 terminology, but I had always assumed that you can use the
4 intuitive argument.

5 MS. CHEN: Okay.

6 THE COURT: But, I think it's fair to say that if
7 you were to raise that in any explicit way than you already
8 have, it might create a problem in terms of the Government not
9 being permitted to do the same thing you're permitted to do I
10 don't think you need to do it.

11 MS. CHEN: One last issue, Your Honor, I want to
12 raise tomorrow when we put on Jodi I am -- I do intend to ask
13 her about mental health treatment she received after leaving
14 the defendant. We had previously provided redacted records so
15 I recognize that our affirmative use or our affirmative
16 reference to her psychological treatment history. I mean, we
17 may be called upon us to turn over all the records I guess I
18 want -- in fairness to the defense -- and let the Court know
19 that we do plan to reference it in her direct since obviously
20 it will come out in cross. Previously, we'd been required
21 only to turn over that information that relates to Brady or
22 JIG Leo.

23 THE COURT: So you're going to turn over the whole
24 thing?

25 MS. CHEN: I want guidance. If we reference it in a

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1 fashion we should turn it over in wholesale turn it over.

2 THE COURT: I think it makes sense.

3 MS. CHEN: Fine we'll do that in morning.

4 THE COURT: Within the limits of use that we
5 discussed in the past, Mr. Sercarz.

6 MR. SERCARZ: As I stand here, I'm not certain what
7 the relevance is.

8 THE COURT: I'm not certain either, but if you want
9 to that's fine.

10 MR. SERCARZ: I will reserve my right to it. At the
11 moment, when I hear testimony why it is that they're seeking
12 to introduce that she sought psychiatric care when she have
13 left the defendant.

14 MS. CHEN: If the defense is going into it we can
15 confront it.

16 MR. SERCARZ: I don't know that I'm going to go into
17 it.

18 MS. CHEN: It's part of a story, if you will, Your
19 Honor, about her exit or exodus from the situation. I don't
20 think it's an inappropriate topic.

21 THE COURT: I don't think it's inappropriate either.
22 So, given that, I will allow the Government to raise it in her
23 direct testimony. You may want everything not.

24 MR. SERCARZ: I don't know, looking at all the
25 records. I will have a couple of brief comments on my own.

1 The Court has been giving me the transcripts of
2 various proceedings --

3 THE COURT: And I am going to continue giving you
4 the.

5 MR. SERCARZ: Pursuant to the Criminal Justice Act?

6 THE COURT: Yes.

7 MR. SERCARZ: Number two, in connection with the
8 3500 material I have two applications.

9 The Court may recall that we were given Brady notice
10 very early on with regard to a woman named "Nameless." We
11 were given the name of a lawyer and told you can talk to the
12 lawyer. The lawyer told me the client doesn't want to talk to
13 you and so I came back to the Court and asked the Court to
14 require the Government to provide us with her name.

15 I now have her name and I have had a subpoena served
16 upon her and I am informed now that she's apparently
17 undergoing or has undergone some serious surgery and may not
18 be able to be here.

19 For starters, I believe it to be my understanding
20 that the coin of the realm when you're dealing with Brady
21 material is that it must be given in such a timely fashion and
22 in such a way that defense counsel could make use of it in
23 preparing for trial. I have not been given an FBI 302
24 indicating what this woman ever said, all I know is that
25 there's an exculpatory witness.

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1 THE COURT: Is there any Brady material in anything,
2 any statement by "Nameless"?

3 MS. CHEN: I'd have to look, Your Honor.

4 THE COURT: Would you go back and look at that
5 again.

6 MS. CHEN: To set the record straight, I think we
7 thought dispensed with obligation by advising them and we
8 actually recently Mr. Sercarz the address so he can find her,
9 but, and I'm speaking for Mr. Wenner, obviously, but that we
10 had satisfied our obligation pursuant to, I think, some
11 proceedings before the Court by giving them the information so
12 they could contact her on home I have will look again.

13 THE COURT: I really, you know.

14 MS. CHEN: Right.

15 THE COURT: That may well have been the ruling at
16 the time, but if for some reason.

17 MS. CHEN: I certainly will.

18 THE COURT: Since he is unable to get her.

19 I don't know what's in that report material but
20 there is nothing in the material that you will consider Brady
21 even if the witness is not taking the witness stand.

22 MS. CHEN: I will go and look at that, Your Honor.

23 THE COURT: Certainly.

24 MR. SERCARZ: Number two, in his testimony before
25 the grand jury, Special Agent Berglass was asked whether he

1 sought to corroborate the testimony the information he had
2 received from Jodi and he said, I sought to corroborate it and
3 to that end, interviewed six or eight other women.

4 You'll note that according to the 3500 material I've
5 received the Government does not intend to call any other
6 women for the purpose of corroborating anything that Jodi has
7 said in this case.

8 Indeed, I threw down the gauntlet on my opening
9 statement but I think that I am entitled to now under Rule
10 3500 to the interviews between Agent Berglass and the agents
11 that worked together with him and these other women because it
12 relates to the subject matter of his testimony.

13 If he will testify the subject of what he did to
14 investigate this case is fair game and I would like to know
15 what questions he asked the other women he interviewed and
16 what information he elicited from them about Jodi.

17 MS. CHEN: Your Honor, this is total hearsay.

18 THE COURT: That's the problem.

19 MS. CHEN: And beyond that, Your Honor, we're not
20 having Agent Berglass to talk about corroboration efforts.
21 He's here to enter in the download which he did and talk about
22 the defendant's post-arrest statements. That's why it's not
23 the substance of his testimony and we didn't turn it over and
24 it will be completely ask what he said to.

25 MR. SERCARZ: Put it this way for starters, if he

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1 asked them about Jodi and they did not corroborate information
2 that Jodi provided I submit that that would be Brady and I
3 believe I'm entitled to it.

4 MS. CHEN: Your Honor.

5 THE COURT: It's still hearsay. Just explain to me
6 why it's not hearsay? It's statements made to the Government
7 agent from witnesses who are not on the witness stand.

8 MR. SERCARZ: Correct.

9 THE COURT: Why is that the not hearsay?

10 MR. SERCARZ: It may be hearsay, I don't believe
11 Brady material is limited to nonhearsay. If we go back just a
12 moment to the situation with "Nameless," the woman "Nameless,"
13 if she was asked whether she observed something happening to
14 Jodi and she gives an account that's different from the
15 one that Jodi is going to testify to on the witness stand or
16 that she offered when Agent Berglass interviewed her that
17 would be Brady material.

18 The question of whether that the particular FBI 302
19 is hearsay doesn't speak to whether or not the 302 is Brady
20 material because it contradicts what their complainant says
21 and I believe by a like token any information elicited by
22 Agent Berglass from women who claim to have been there during
23 the period when Mr. Marcus was engaged in his encounter with
24 Jodi that contradicts what Jodi will say and has said to date
25 is Brady material and I ought to be entitled to it.

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1 MS. CHEN: I don't agree with that. I don't know if
2 Mr. Sercarz keeps saying that I know Mr. Wenner very
3 conscientiously scrupulously went through 302s as they were
4 coming in and talking to the agent. We turned over any Brady
5 we thought we had found, so that issue is resolved.

6 I don't think it has anything to do the trial and it
7 has nothing to do with Agent Berglass's testimony. He can
8 testify to it even if the Brady existed which it doesn't. If
9 it did, I would give it to Mr. Sercarz. I will look at the
10 302s; again, we consider this issue since Mr. Wenner did his
11 disclosure but I'm happy to do that to satisfy Mr. Sercarz and
12 the Court.

13 THE COURT: That's fine.

14 MR. SERCARZ: That's fine.

15 THE COURT: I guess we still have some open
16 questions regarding Dr. Lathe inner.

17 MS. CHEN: I was going to address that, Your Honor.

18 THE COURT: Okay.

19 MS. CHEN: We, unfortunately, didn't have the
20 statement we did promise by this morning ready. We do have
21 some additional Ms. Magnelli is going to put something
22 together with Dr. Laden over the weekend who wanted to review
23 some more materials before they finalize, I guess, a coherent
24 statement.

25 THE COURT: When is the doctor going to take the

1 stand?

2 MS. CHEN: Probably Wednesday at the earliest
3 depending on how long.

4 THE COURT: We also have -- I don't know how we're
5 going to deal with this -- we may have a snowstorm coming
6 Tuesday night into Wednesday. We have to track the weather;
7 it really looks like it's going to be bad we may end up taking
8 that day off instead of Friday off. If it doesn't look like
9 it's going to be bad, then, we're going to move through it. I
10 am concerned to get this material to Mr. Sercarz as soon as we
11 can.

12 MS. CHEN: We have some additional materials that we
13 will give you right now.

14 THE COURT: The letter is going to be critical
15 because the letter will summarize some of the concerns that I
16 expressed in matters that undoubtedly will be explored in the
17 voir dire out of the presence of the jury.

18 All right, so we'll get that by tomorrow is lawyer
19 what you're say.

20 MS. CHEN: Yes.

21 THE COURT: If there is a time issue because of that
22 I'll address it. If you have a problem I'll address it, okay.

23 MR. SERCARZ: Very well.

24 THE COURT: Learned treatises?

25 MS. CHEN: None from the Government.

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1 THE COURT: None from the Government.

2 Mr. Sercarz, the one thing that strikes me as
3 accurate is I have no problem with your expert putting
4 acknowledging other people's works as learned treatises and
5 using that because that would be a proper authentication and
6 you could read to the jury whatever it is but the consent his
7 putting his referring to his own work as "learned treatises"
8 is redundant. He can testify that he did a study, that this
9 was published in a peer reviewed journal, that he reached
10 these conclusions that I don't think his own article would be
11 coming in under that you see.

12 MR. SERCARZ: Yes.

13 MS. CHEN: May I ask a question? I wanted to know
14 if the defense putting on any nonexpert witness this week
15 should we finish before the week's end which is likely?

16 MR. SERCARZ: We may to fill up the time.

17 MS. CHEN: I wasn't sure if there was a scheduling
18 issue with respect to the nonexperts.

19 THE COURT: So, you may be able to go forward. Your
20 case is really just.

21 MS. CHEN: Ours is brief.

22 THE COURT: You will be putting on a brief --

23 MS. CHEN: Two agents and the doctor.

24 THE COURT: Two agents and Dr. Laden.

25 MS. CHEN: Yes.

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1 THE COURT: I assume Jodi will consume a portion of
2 time.

3 MS. CHEN: Her direct will consume a very
4 significant portion of tomorrow.

5 THE COURT: Okay. Then I assume her cross will even
6 go into Wednesday, I assume, as well.

7 And, presumably, I think you're probably planning to
8 do it. In any event, I think the both of you should talk
9 about putting on Dr. Laden on at the end giving everyone the
10 maximum opportunity to deal with it before she takes the
11 stand.

12 MS. CHEN: That was already our --

13 THE COURT: Okay. So, you may well not get to her
14 until Thursday in any event even if we have no hiatus bus the
15 snow storm.

16 MS. CHEN: I think that's problem. Wednesday seems
17 realistic to me but Mr. Sercarz could cross for a while.

18 THE COURT: Okay.

19 MS. CHEN: I am going to hand these up, these are
20 copies of studies and I am going to give copies to the defense
21 as well.

22 THE COURT: Have a good night.

23 (WHEREUPON, the proceedings were adjourned to
24 February 13, 2007, at 9:30 a.m.)
25

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